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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,554	01/16/2002	Andrew Baker		1808

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GOSZ AND PARTNERS, LLP  
450 BEDFORD STREET  
LEXINGTON, MA 02420

EXAMINER
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KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/046,554

Applicant(s)

BAKER, ANDREW

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23, 26-47 and 50-53 is/are pending in the application.
- 4a) Of the above claim(s) 26-29 and 50-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 30-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 16, 2007 has been entered.

### ***Response to Arguments***

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 10, 17 – 23, 30 – 34 and 41 – 47 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen et al. (US 6,492,574.

As to claims 1 and 30, Chen et al. (hereinafter "Chen") discloses an absorbent article having a longitudinal dimension and a lateral dimension comprising: a top sheet, a back sheet, and a multi-component absorbent core composite disposed between the top sheet and the back sheet wherein the multi-component absorbent core composite comprises three separate core units in laterally adjacent, non-overlapping alignment with each other (figure 2), the first core unit (18) being positioned between second and third core units, the first core having different properties from the second and third core units (col. 12, lines 38 – 41) where the first absorbent core unit is comprised of a mixture of tow fibers and superabsorbent polymer (SAP) and wherein the three absorbent core units are positioned in a lateral direction parallel to the top sheet and backsheet as set forth in col. 14, lines 26 – 46, col. 32, lines 53 – 67 and in figure 2.

The recited steps of the method claim are inherently included in the rejection of claim 1.

With reference to claim 2, Chen discloses an absorbent article whereby the article has a first waist region, a second waist region longitudinally opposed to the first waist region, and a crotch region between the first and second waist regions, the article further comprising at least one fastening element attached to a lateral edge of the first waist region; and one or more target devices attached to the article in the second waist region, where at least one fastening element and the one or more target devices are capable of attaching to one another, the one or more target devices being located so that the first waist region and second waist region of the garment may be joined to one another to secure the garment on a wearer as set forth in col. 42, lines 47 – 56. In this

section, Chen incorporates Buell (US 5,152,092). Buell discloses the structure as claimed in figure 1.

Regarding claim 3, Buell discloses an absorbent article further comprising elastic leg gathers (32) comprising one or more elastic materials disposed adjacent a lateral edge of the crotch region, and standing leg gathers disposed on the top sheet adjacent the lateral edge of the crotch region as set forth in col. 11, line 52 to col. 12, line 22.

As to claim 4, Buell discloses an absorbent article wherein the at least one fastening element comprises a hook portion of a hook and loop fastener and the one or more target devices comprise the loop portion of a hook and loop fastener as set forth in col. 26, lines 59 – 62.

With respect to claim 5, Buell discloses an absorbent article wherein the at least one fastening element is an adhesive tape and the one or more target devices comprise a tape receiving surface as set forth in col. 26, lines 51 – 55.

With reference to claim 6, Buell discloses an absorbent article wherein the at least one fastening element is comprised of a pair of laterally extending tabs disposed on the lateral edges of the first waist region, whereby the laterally extending tabs each include at least one fastening element in figure 1.

Regarding claims 7 and 31, Chen discloses an absorbent article wherein at least one additional layer is disposed between the multi-component absorbent core composite and the top sheet as set forth in col. 32, lines 53 – 54.

As to claims 8, 10, 32 and 34, Chen discloses an absorbent article wherein the at least one additional layer is selected from the group consisting of a fluid acquisition

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layer, a distribution layer, an additional fibrous layer optionally containing SAP, a wicking layer, a storage layer, and combinations and fragments thereof as set forth in col. 14, lines 26 – 46 and col. 32, lines 53 – 54.

With respect to claims 9 and 33, Chen discloses an absorbent article wherein one of the absorbent core units includes at least one additional layer as set forth in col. 32, lines 53 – 54.

As to claims 17 – 23 and 41 – 47, Chen discloses that the all three absorbent core units may be configured as claimed as set forth in col. 14, lines 26 – 46 and in col. 32, lines 53 – 67.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 – 16 and 35 – 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (US 6,492,574).

Regarding claims 11 and 35, Chen discloses a multi layered central absorbent member wherein the additional absorbent layer may be tissue layers as set forth in col. 32, lines 53 – 61. Chen also discloses that the absorbent member can include super absorbent polymer (SAP) as set forth in col. 14, lines 26 – 46.

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It would have been obvious to one of ordinary skill in the art to modify the amount of SAP as desired, thereby providing the claimed SAP efficiency, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range is within the level of ordinary skill in the art.

As to claims 12, 15 – 16, 36 and 39 – 40, Chen discloses an absorbent article wherein the central layer comprises tow fibers as set forth in col. 32, lines 66 – 67.

The examiner contends that the substitution of one type of tow material for another is within the level of ordinary skill in the art.

With reference to claims 13 and 37, see the rejection of claims 11 and 35.

Regarding claims 14 and 38, Chen discloses an absorbent article wherein the central layer further comprises particulate additives as set forth in col. 14, line 65 to col. 15, line 3.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michele Kidwell  
Primary Examiner  
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